IREC
INTERSTATE RENEWABLE ENERGY COUNCIL

Making Sense of EPAct 2005's Nebulous Net Metering, Interconnection Provisions

Connecting to the Grid
August 2005
by Chris Cook (commentary)

Nestled in the landmark 1,724-page *Energy Policy Act of 2005* are Section 1251, which pertains to net metering, and Section 1254, which addresses interconnection. Rather than mandating federal net-metering standards and interconnection standards, the two sections direct states to undertake consideration and make a determination with respect to each standard. It is impossible to say with certainty if states will have broad or narrow discretion in meeting the requirements of these sections. To date, almost all actions on net metering have occurred at the state level. Conversely, interconnection standards have been driven by the Federal Energy Regulatory Commission (FERC), with states largely following the commission's lead. It is also unclear whether the new federal law will affect the traditional jurisdictional lines between the activities of the states with respect to interconnection. The new law could inspire FERC to become more aggressive in elevating its own rules to become the national standard.

The essence of Section 1254 is to promote the standardization of interconnection procedures around the IEEE 1547 standard. Whether fortuitous or by design, Congress' articulation on interconnection happens to fit nicely with FERC's interconnection rules for small generators (Order 2006), issued in May 2005. The small-generator rules contain provisions for the expedited interconnection of generators in a class less than 10 kilowatts (kW) and a class up to 2 megawatts (MW) -- provided, in each case, that the generator complies with IEEE 1547 standards.

The FERC rules will apply only to all transmission owners, but the commission has not been shy in noting that states will benefit by adopting similar standards. The direct application of the FERC rule will be to require any utility in any state that owns high-voltage transmission lines to include the new interconnection standards as part of their open access transmission tariffs (OATTs). By that mechanism, small generators in most states will have a federal interconnection standard based in part on IEEE 1547 -- if they can find a way to fall under FERC jurisdiction).

So one possible interpretation of Congress' intent in crafting Section 1254 was to extend the FERC rules to all small generators. Under this interpretation, there is little work for any states to do, other than to adopt the FERC interconnection rules for state jurisdictional generators, perhaps with minor modifications.

It is clear that either FERC or a federal tribunal will find any state-based interconnection standard that closely tracks FERC's rules in Order 2006 to comply with the intention of Section 1254. What remains unknown is whether a state ruling that creates interconnection rules that deviate significantly from Order 2006, or a state ruling that "considers" but then wholly rejects IEEE 1547 as the basis for interconnection, will survive an appeal to FERC or the federal courts.

Clearly, the small-generator community would like to see national interconnection standards implemented. While no representative of the small-generator community has come forward to praise the FERC rules under Order 2006, the close resemblance with the FERC rules and the consensus filing supported by the Small Generator Coalition (SGC) is an indication that the rules are workable from the small-generator perspective. As a practical matter, this would suggest that a state-based interconnection standard that closely tracks FERC Order 2006 would receive no objection from small generators.

Most likely to create an atmosphere for legal challenge to a state interconnection rule and the intention of Section 1254 would be a state rule that rejects in whole or in part the fundamental elements of Order 2006. When this occurs, FERC and the courts will determine how far Congress intended to act in creating a national interconnection standard.

Appellate courts would struggle with the lack of any mandate in Section 1254, and would have to give some deference to the states' ability to "consider" -- rather than to "adopt" -- interconnection standards based on IEEE 1547. Provided a state decision had a rational basis for deviation from the rules under Order 2006, the appellate courts would likely uphold such a decision. Because of the many state and federal policy positions on the need to promote distributed generation (DG), a state standard that presented a barrier to the interconnection of DG would be difficult for FERC and the courts to uphold. A state's rational basis for rejecting the FERC interconnection rules would have to clearly address this policy concern.

Existing state standards that closely resemble the FERC standard are undoubtedly safe under Section 1254. These include the rules in place in New Jersey, and those proposed in Colorado and Indiana. (Pennsylvania's proposed interconnection standard is too recent to have been reviewed). Other states, like Massachusetts, which have interconnection rules that resemble the FERC rules but deviate in a significant way (e.g., the peak load limit in Massachusetts is almost half that of the FERC rule), may be subject to challenge if the state decides not to adjust its rules. The singular example where a state might reject adoption of Order 2006 and yet still maintain an interconnection rule that looks quite different from the FERC rule is California. Even though California's rule is significantly different from FERC's rule, the state can make a reasonable argument that its rule nonetheless effectuates interconnection in compliance with Section 1254 primarily because it does not create unreasonable barrier to the use of DG.

I suspect that where a state deviates from Order 2006 and that deviation represents a clear barrier to the interconnection of DG, that rule will be found inconsistent with Section 1254 and will not survive. This assumes that the state will have a weak factual basis for adopting a more conservative interconnection rule -- one that will easily be undermined based on the empirical evidence and DG activities in other states.

Unlike interconnection, there has been heretofore no significant federal action on net metering. Except for the single case discussed below, there is no FERC order or rule that establishes any requirement for a utility to offer net metering. All of the net-metering provisions in place today

are state creations (or, in a few cases, utility creations).

Net-metering requirements under Section 1251 of the *Energy Policy Act of 2005* are difficult to determine. Although 39 states have some form of net metering, these rules vary widely among states; there are few commonalities among their rules. Some states allow customers to use a wide array of generating technologies, while others limit net metering to solar only. While most states provide annual net metering -- where any monthly net excess generation (NEG) is carried forward to be used against consumption in future months – a few states require reconciliation at each billing. Perhaps the greatest area of deviation pertains to system size. At the low end, some states limit net metering to generators less than 10 kW in capacity. The recent trend is to allow a much larger system size for net metering, usually in concert with a renewable portfolio standard (RPS) that includes a specific solar requirement. California is the former national leader in individual system size, with a 1-MW net-metering limit for solar-electric systems. However, California's limit has been eclipsed by rules, statute and consensus agreement in New Jersey, Pennsylvania and Colorado respectively. All three states have increased the net-metering limit for qualified renewables to 2 MW in an effort to allow compliance with the solar requirements under each state's RPS.

Section 1251 does not set any parameters for state consideration of net metering and does not address any of the issues above. So it is unclear how a state's determination *not* to implement net metering, or to do so in a most restrictive fashion, will be reviewed by FERC or the federal courts.

The single case that may shed some light on FERC's stance on net metering is *Swecker v. Midland* (Docket EL03-53-000). In this case, which has been covered extensively in previous IREC Interconnection Newsletter articles, FERC ordered Midland Power Cooperative to provide net metering to Gregory Swecker, a customer with a 60-kW wind generator. While FERC justified this action as appropriate under PURPA, it did not indicate a size restriction on qualifying generators. This specific order did implement annual net metering for Swecker. FERC also conveyed in a footnote in an earlier decision in this docket that language similar to Section 1251 as proposed in the *Energy Policy Act of 2003* (which failed) would have created a federal net-metering requirement. Even though this articulation was limited to a footnote, it -- combined with FERC's actions under PURPA in the *Swecker* case -- seems to indicate commission would take a fairly aggressive approach to implementing net metering and could seek some level of standardization. Whether any aggressive FERC action on net metering would be upheld by the courts is another matter. Because many utilities see net metering as a cross subsidization, any FERC move in this area likely would be challenged.

It is noteworthy that the *Swecker* case came to FERC because the electric cooperative was outside of state utility regulatory jurisdiction, and as such was not required under state law to implement net metering. This case may indicate that FERC will use Section 1251 to require utilities that are not under state regulatory authority to offer net metering to customers (and interconnection under 1254). It is possible that FERC will follow the net-metering standards in a state and apply them to non-regulated utilities under Section 1251. Then again, FERC may develop its own standards to be used in these cases.

FERC may use the need to develop net-metering standards for non-regulated utilities to propose a national model, as it did with small-generator interconnection. If FERC undertakes an initiative that involves the states and other stakeholders, it might generate open debate on the

proper limits for net metering and other guidelines. Recent state actions to raise net-metering limits to 2 MW dovetails with the FERC limit for expediting small generator interconnection (also at 2 MW) may push a national net-metering model to a 2-MW limit. As there is little guidance and no apparent trend on other net-metering issues, (e.g. total aggregate net-metering capacity allowed) it is impossible to say how a national standard might address these. Unlike the comprehensive federal interconnection rule, a national net-metering model may include many discretionary decisions to be made by the various states.

The current net-metering landscape differs significantly from the situation for small generator interconnection. With respect to the latter, few states had comprehensive rules for small generators when FERC announced its intention to create interconnection rules that would not only apply to FERC jurisdictional entities, but would serve as a national model for states. Any effort to establish a national net-metering model will have to accommodate the significant and various rules and laws existing among the 39 states with net metering. In addition, a national net-metering standard should include a description for the basis of its existence, as well as a rationale for why a national standard is necessary to promote the use of DG. Where interconnection was simply filling a vacuum, a national net-metering effort will have to indicate which state net-metering rules are not working, and why they should be supplanted with a national standard.